

Key Ideas

Chapter 7: The Excessive Levy Appeal Process



In this section, we will discuss the following:

- *The excessive levy appeal process.*
- *The time frame for filing an excessive levy appeal with the Department of Local Government Finance*
- *The different appeals available to cities/towns.*
- *How to include an excessive levy appeal in the budget process.*

EXCESSIVE LEVY APPEAL PROCESS

The following section describes the excessive levy appeal process for Clerk-Treasurers. Before beginning, it is important to have a general understanding of what an excessive levy appeal is and how the appeal ties into the budget process. An excessive levy appeal is a request for consideration of an increase in levy for a city/town that is experiencing increased growth or increased operating expenses. The increase requested is above the normal maximum levy limitation in place by statute. The following outlines the excessive levy appeal process, time frame for consideration of an appeal, application to be filed and current appeals available.

Process

Any city/town that determines that it cannot carry out its governmental functions for the ensuing calendar year under the levy limitations imposed by statute may on or before **September 19** of the year preceding the ensuing calendar year appeal to the Department of Local Government Finance for an increase in levy. The appeal must be submitted to the following address:

Department of Local Government Finance
Attention: Budget Division
Indiana Government Center North
100 North Senate Ave, Room N-1058
Indianapolis, IN 46204-2211



Any city/town that determines that it cannot carry out its governmental functions for the ensuing calendar year under the levy limitations imposed by statute may on or before September 19 of the year preceding the ensuing calendar year appeal to the Department of Local Government Finance for an increase in levy.

A city/town is required to file a written petition with the Department of Local Government Finance stating that it cannot carry out the functions required by law and must supply a detailed statement outlining the need for an appeal. The Department of Local Government Finance submits the appeal petition to the Administrative Officer of the Local Government Control Board for consideration of the appeal.

The city or town may/may not be required to appear before the Local Government Tax Control Board for consideration of the appeal. The Local Government Tax Control Board reviews the petition and the financial information and makes a recommendation to the Department of Local Government Finance. The Local Government Tax Control Board is a recommending body only. The Department of Local Government Finance will make the final decision and an order will be issued to reflect the final determination.

Cities/towns that fail to submit the required information will be denied and the city/town may not submit a new application until the next subsequent taxing year.

Time-frame

A city/town must consider application for an appeal during budget preparation. Any excessive levy appeals become part of the city/town's budget estimates for the ensuing calendar year. When the city/town prepares budget estimates for the ensuing calendar year, the amount of the excessive levy appeal to be considered by the City/Town Council and by the Department of Local Government Finance must be included in the city/town's estimated levy on line 16 and budget estimate reflected on line 1 of city/town Form 4B. This levy figure must be inflated above your current maximum levy limitation to support consideration of an appeal. Example: If an appeal for volunteer fire expenses is pursued and the city/town foresees an increase in levy of \$10,000 then the net amount to be raised on Line 16 of Form 4B should include the \$10,000 appeal to be considered by the City/Town Council and Department of Local Government Finance plus the normal levy requested. If a City/Town Council fails to adopt the excessive levy appeal requested, the Department of Local Government Finance will not consider the request. It is the City/Town's responsibility to advertise and adopt high enough for consideration of an appeal.



A city/town must consider application for an appeal during budget preparation.

Application

Each year, the Budget Division of the Department of Local Government Finance mails to each city/town a "Report of Appealing Taxing Unit" (see Appendix A-17 through A-30) that identifies the type of appeals available to all taxing units for the ensuing calendar year. The appeal petition must be submitted directly to the Department of Local Government Finance's Budget Division on or before September 19th.

The fiscal officer must complete the top section of the appeal application (Report of Appealing Taxing Unit), which provides the Budget Division with the appropriate mailing information. The blanks include the city/town name, county, fiscal officer's name, address, city/state/zip, telephone, fax and e-mail address. The hearing notice will be mailed to the name and address listed in this section.

The fiscal officer must indicate the type(s) and amount(s) of each appeal to be considered on the first page of the appeal application by filling in the dollar amount of the requested levy increase next to the appropriate appeal type. The Administrative Officer for the Local Government Tax Control Board must be able to identify which appeal the fiscal officer is applying for before a hearing will be scheduled. Additional pages can be attached if the space provided is not ample.

The fiscal officer must specify why an appeal is necessary. This should not consist of a general statement that expenses have increased. The fiscal officer should specify which costs have increased or what services cannot be provided to taxpayers and the explanation should support the entire need for the appeal. Additional pages can be attached if the space provided is not ample.

The following appeals are available to cities/towns:

- 1) Annexation, consolidation or other extensions of governmental services to additional geographic areas or persons:** This appeal is for cities/towns that annex additional area within the corporate boundaries. The appeal allows a city/town to collect additional revenues to support the increased operating expense due to the annexation. Copies of any annexation ordinances, plans and financial information must be submitted to the Administrative Officer of the Local Government Tax Control Board as well as a copy of the ensuing year's maximum levy worksheet. This appeal results in a permanent increase to the unit's maximum levy.
- 2) Cost of operating a new court:** This appeal allows a city/town to capture increased costs associated with operating a new court. The appeal is limited to the unit's share of court costs of the first full calendar year of operation of the new court. Any unit applying for the appeal must provide a detailed breakdown of costs minus increased court related revenues during the first full year the court was in existence and the prior year costs of operating a court. The appeal is applicable one (1) time only but is considered a permanent increase to the maximum levy limitation for the city/town.
- 3) Three-year growth factor:** This appeal is applicable to taxing units that experience excessive growth over a three-year period. A unit qualifies for the appeal if its average assessed value growth quotient (AVGQ) over the last three years exceeds the statewide average growth quotient by at least 2%. The statewide average growth quotient is based on the six-year average statewide growth in Indiana Non Farm Personal Income and can be found on the unit's maximum levy worksheet. Because the six-year average of Indiana Non Farm Personal Income changes each year, the city/town must annually calculate the average in accordance with the excessive levy appeal forms available through the Department of Local Government Finance. **The amount of growth factor allowable for this appeal is the difference between the Statewide Average Growth Factor and the city/town's three-year assessed value growth.** This appeal results in a permanent increase to the unit's maximum levy.

To calculate the city/town's three-year growth factor, use the following formula:

- Step 1:** Determine your certified assessed values for the last four years.
- Step 2:** Calculate your assessed value growth for each of the last three years.
- Step 3:** Calculate the average assessed value growth quotient by taking the sum of the results of Step 2 and dividing by three (3).
- Step 4:** Calculate the amount of increase to the maximum levy. The amount of increase is calculated as follows: average assessed value growth quotient minus the statewide maximum levy growth factor equals the percent of increase to the maximum levy (this would be in addition to the automatic increase in levy).



The three-year growth appeal is applicable to city/town's that experience excessive growth over a three-year period.

- 4) Volunteer fire expense:** This appeal is for city/towns that contract with a volunteer fire department for fire protection services. A city/town that experiences at least twenty-percent (20%) growth in operating expenses may qualify. The following are considered qualifying expenses for a Volunteer Fire Appeal: hydrant rental, insurance, clothing allowance, gasoline and oil, repairs, supplies, heat for buildings, water and other utilities, contract payments. The city/town must be at its maximum levy limitation to be considered for this appeal. The amount a unit qualifies for is based upon the following calculation as demonstrated by this example:

a. Current year approved budget amount for volunteer fire expense (as reflected on the budget order).	\$20,000
b. Current year approved additional appropriations for fire.	\$25,000
c. Expenses in (a) or (b) allocated for full-time firefighters.	\$10,000
d. Current year volunteer fire expense: (line (a) plus (b) minus (c)).	\$35,000
e. Amount of emergency loan for volunteer fire expense.	\$ 0
f. Net current year volunteer fire expense (lines (d) minus (e)).	\$35,000
g. Multiply line (f) by 20%.	\$ 7,000
h. Determine the lesser of line (g) or \$10,000.	\$ 7,000
i. Ensuing year's adopted budget amount for fire (adopted by fiscal body).	\$48,000
j. Expenses in (i) allocated for full-time firefighters.	\$10,000
k. Net ensuing year volunteer fire budget [(i) minus (j)]	\$38,000
l. Increase in expenses between current year and ensuing year [(k) minus (f)].	\$ 3,000
m. Qualifying amount is the lesser of (h) or (l)	\$ 3,000

There are three figures Department of Local Government Finance reviews when determining the amount of appeal available for Volunteer Fire Expense: line (g), line (l) and \$10,000. The unit is eligible for an amount that is the lesser of these three figures. To determine if your city/town is eligible for an appeal, simply work the formula and compare the three figures. A detailed listing of current expenditures and proposed increases in expenditures must be submitted to demonstrate the need for an appeal. This appeal results in a permanent increase to the unit's maximum levy.



This appeal is for city/towns that contract with a volunteer fire department for fire protection services.

- 5) Correction of any advertising errors, mathematical errors or errors in data.** The unit simply states what type of error(s) occurred and the amount of the error that should be considered by the Control Board. The Department of Local Government Finance will review the information presented and consider the appeal. The appeal form should provide documentation that identifies the type and amount of errors made. The resulting increase in levy can either be permanent or temporary depending on the type of error.

- 6) Shortfall due to erroneous assessed valuation:** This appeal is applicable to taxing units that experience a shortfall of property taxes due to an erroneous assessed value. The unit must state the specific cause of the shortfall and provide the following: Form 22's (Certificate of Tax Distribution) for all funds within the maximum levy, County Form 127CER (Register of Certificates of Error), and County Form 17TC (Certificate of Tax Refund Claims). Shortfall appeals without the appropriate documentation may be subject to disapproval and no shortfalls will be considered for delinquent tax payments. Anticipated shortfalls based on current year distributions will not be considered unless the unit can prove extreme financial hardship. This appeal is temporary and results in an increase in levy for one year only.
- 7) Police or Fire pension payments and contributions:** This appeal is applicable to cities/towns that experience increases in pension payments and/or contributions for police or firefighters. This appeal results in a permanent increase to the unit's maximum levy. The amount a unit qualifies for is based upon the following calculation as demonstrated by this example:

CONTRIBUTIONS

(a) Number of Personnel for which Contributions were made for Ensuing Year	45
(b) Number of Personnel for which Contributions are to be made for Current Year	30
(c) Increase in Personnel [Line (a) minus Line (b)]	15
(d) Ensuing Year Contributions	\$315,000
(e) Current Year Contributions	\$210,000
(f) Increase in Contributions [(d) – (e)]	\$105,000

PENSION PAYMENTS

(g) Ensuing Year Appropriations for Pension Payments	\$420,000
(h) Current Year Appropriations for Pension Payments	\$380,000
(i) Increase in Pension Payments [(g) – (h)]	\$40,000
(j) Number Anticipated to Receive Benefits for Ensuing Year	16
(k) Number Receiving Benefits during Current Year	12

APPEAL CALCULATIONS

(l) Total Contributions and Payments Current Year [(e) + (h)]	\$590,000
(m) Multiply line (l) by 1.1	\$649,000
(n) Total Contributions and Payments for Ensuing Year [(d) + (g)]	\$695,000
(o) Amount to be Considered for Levy Increase [(n) – (m)]	\$46,000



This appeal is for city/towns that experience increases in pension payments and/or contributions for police.

- 8) Public Transportation (not to exceed a one cent tax rate):** This appeal is for cities/towns that experience increased operating costs associated with public transportation. The Control Board looks at levies and tax rates of similar sized units and the effect of a loss of federal or other funds used for public transportation purposes. The maximum amount of increase that may be granted for public transportation purposes is \$.01 per \$100 of assessed valuation. This appeal results in a permanent increase to the unit's maximum levy.

- 9) **Hazardous Waste Removal** (not to exceed a .0667 tax rate): This appeal is necessary to provide removal and remedial action relating to hazardous substances in solid waste disposal facilities or industrial sites in the civil taxing unit that are considered a menace to the public health and welfare. The appeal is restricted to certain areas depending on population. (Refer to IC 6-1.1-18.5-13b(9)). The maximum amount of this appeal is .0667 for each \$100 of assessed valuation and the increased tax rate may be imposed for only two calendar years.

Documentation Required for All Appeal Types

For consideration before the Local Government Tax Control Board, all excessive levy appeal requests must include the following information in addition to the type of information required for the type of appeal under consideration:

- Report of appealing taxing unit.
- Ensuing year maximum levy sheet for funds under appeal.
- Ensuing year budget proof of publication.
- Estimate of miscellaneous revenue (Budget Form 2) for funds under appeal.
- “16 Line” Financial Statement (Budget Form 4B) for funds under appeal.
- Resolution from fiscal body approving the excessive levy appeal.
- Ten (10) copies of all of the above.

Recommendation by Control Board

The Control Board reviews the appeal information and ensures proper procedures have been followed. The Control Board makes a recommendation to the Department of Local Government Finance approving, reducing, or disapproving an appeal request. *It is important to understand that the Control Board is a recommending body only.* The Department of Local Government Finance will make a decision based on the information presented and testimony given at the hearing. An order will be issued reflecting the final decision of the Department of Local Government Finance.



The Control Board makes a recommendation to the Department of Local Government Finance approving, reducing, or disapproving an appeal request. It is important to understand that the Control Board is a recommending body only.

Additional Levy

If the Department of Local Government Finance approves an excessive levy appeal for your city/town, the amount will be “worked” in prior to certification of budgets, tax rates and tax levies for the city/town.

Summary

Chapter 7: The Excessive Levy Appeal Process



In this section, we have discussed the following:

- *What an excessive levy appeal is and the process to file an appeal.*
- *There are several appeals available to cities/towns.*
- *The Local Government Tax Control Board makes a recommendation to the Department of Local Government Finance.*
- *Appeals must be considered as part of the local budget process.*